

1 calm down a bit. I think rebuttal expert
2 witnesses is really opening the door to all
3 kinds of -- you can have surrebuttal, let me
4 finish. You can have rebuttal, you can have
5 surrebuttal, and experts, factually, they very
6 rarely say much. It's all out here in the
7 clouds.. They're important, they're very
8 important, particularly on remedy, but I'm
9 very much opposed to having rebuttal expert
10 witnesses.

11 Now, you're going to have expert
12 witnesses on both sides, and it does make
13 sense that the party with the burden of proof
14 go first, so that the expert on the other side
15 can prepare to meet what that burden is, what
16 that case is. But then to start bringing in
17 rebuttals -

18 MS. WALLMAN: Well, just to be
19 clear, I'm not talking about bringing in a new
20 witness. I'm talking about -

21 JUDGE SIPPEL: Putting your
22 witness back on again?

1 MS. WALLMAN: Yes, Your Honor.

2 JUDGE SIPPEL: Well, then you know
3 what that is. Then you shortchange up front.
4 I mean, it's kind of like a -- never mind.
5 That's not a good idea. I think -- when I'm
6 sitting here, I'm expecting is that a witness
7 is going to get on the stand. The witness is
8 going to say everything the witness wants to
9 say that's in the interest of that case, not
10 that he's going to come in with five points,
11 and then make his other five points when he
12 gets called on rebuttal.

13 MS. WALLMAN: That would not be my
14 intent either.

15 JUDGE SIPPEL: I don't think so
16 either, but those things do happen.

17 MR. COHEN: Your Honor, just to
18 respond to the Media Bureau. I mean, what
19 1.351 says is that the Rules of Evidence
20 apply. I don't understand how that could
21 compel us to have written statements.

22 MR. FREDERICK: I think it's

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1 different for comparative hearings.

2 MR. COHEN: Yes, so I think if the
3 Rules clearly contemplate live testimony,
4 everything that subsection contemplates live
5 testimony, we understand the need to be
6 efficient in live testimony. The job is to
7 persuade, not to bore, and we'll move it along
8 quickly.

9 MR. FREDERICK: Your Honor, if
10 Comcast wants to do that, so long as the time
11 allocations for each party are different, we
12 have no objection to that.

13 JUDGE SIPPEL: I'm not going to
14 watch a clock. I'm going to tell you right
15 now, I am not going to watch a clock. I mean,
16 if it's dragging on, I'll -- believe me, I
17 will actively participate in what's going on,
18 but that's all I can promise you. I can't set
19 time limits. That's impossible. That's
20 absolutely impossible, but I -- if I were a
21 betting person, I would bet that that direct
22 testimony will be very short. And you all

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1 better be prepared to cross examine.

2 MR. SOLOMON: Your Honor, can I
3 ask one hopefully non-controversial question.
4 Judge Steinberg had said in earlier pre-
5 hearing conferences that filing electronically
6 with an email copy to the Judge with the
7 receipt on it, even if it was a day late was
8 fine, and not to worry about faxing, that sort
9 of electronic filing and emailing to you is
10 fine. Is that fine with you, as well?

11 JUDGE SIPPEL: The person that you
12 really should be directing that to is Ms.
13 Gosse here. Whatever Judge Steinberg set up
14 is going to continue to happen. Okay?

15 MR. SOLOMON: Thank you.

16 JUDGE SIPPEL: Whatever it is. I
17 am not going to try and change the road map or
18 anything on that kind of thing. So whatever
19 you were doing, continue to do it. Does the
20 Bureau have any objection to that?

21 MS. GOSSE: Please CC me.

22 JUDGE SIPPEL: Yes.

1 MR. SOLOMON: Should we CC you?

2 JUDGE SIPPEL: Be sure you CC -
3 yes, Ms. Gosse gets CC on everything,
4 particularly the email.

5 MS. GOSSE: Electronic filings
6 aren't normally accepted in -- but in this
7 case -

8 MR. SOLOMON: I don't really care
9 how we do it. I just want to make sure I do
10 it right.

11 MS. GOSSE: Whatever is filed
12 electronically, make sure you CC me, please.

13 MR. SOLOMON: Okay. What is your
14 email address?

15 MS. GOSSE: Mary.gosse@FCC.org.

16 MR. SOLOMON: Thank you.

17 JUDGE SIPPEL: And please continue
18 to cover Judge Steinberg with your emails, or
19 your filings. Be sure he stays on it, because
20 he's going to be -- he'll continue to be
21 active in this case in my absence. Yes?

22 MR. SCHONMAN: Your Honor, just to

1 make sure that discovery concludes on the date
2 that you've provided for -

3 JUDGE SIPPEL: That's 20 February.

4 MR. SCHONMAN: Yes.

5 JUDGE SIPPEL: Okay. Go ahead,
6 I'm sorry.

7 MR. SCHONMAN: I wonder if you
8 might solicit opinions from the various
9 parties on curtailing the notice of deposition
10 period from 21 days back to something shorter
11 than that, because that could take the better
12 part of a month.

13 MR. COHEN: We'll work that out.

14 JUDGE SIPPEL: I'm assuming that
15 that's not going to be a factor. They're not
16 going to stand on 20-day rules or something
17 like, no. If we run into the problem, you let
18 me know, and we'll address -- it's not going
19 to happen. It's just not going to happen.
20 They have more important things to think
21 about.

22 Is there anything else I need to

1 cover at this point? Now, I've got exchange
2 of -- I think I -- I'm putting on a date on
3 it, though, the exchange of the reports of the
4 -- well, it would actually be the depositions.
5 When do the depositions of the experts have to
6 be taken? Do you want a date on that?

7 MR. COHEN: I assume they would be
8 taken towards the end of the discovery
9 process, Your Honor.

10 MR. MILLS: As long as they're
11 done by February 20.

12 MR. LEVY: We should be able to
13 work that out, as well.

14 MR. MILLS: We'll work out dates.

15 JUDGE SIPPEL: What I don't want
16 to happen is, is that things get delayed with
17 exchange of the statements, and that type of
18 thing. I mean, you really have to have a lead
19 time with an expert witness to be able to
20 prepare to depose him or her, and also for
21 cross examination. But you work it out.
22 Anybody's got a problem, you come to me or

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1 Judge Steinberg.

2 MR. MILLS: Thank you, Your Honor.

3 JUDGE SIPPEL: Anything else?

4 MR. COHEN: No, Your Honor.

5 JUDGE SIPPEL: Thank you very
6 much. We're in recess.

7 (Whereupon, the proceedings went
8 off the record at 3:36 p.m.)

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